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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
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9 FRANCISCO CANA FERNANDEZ,  
10 Petitioner,  
11 vs.  
12 JACKIE CRAWFORD, et al.,  
13 Respondents.

Case No. 2:04-CV-00997-RLH-(PAL)  
**ORDER**

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15 Petitioner has submitted an Application for Certificate of Appealability (#46). To  
16 appeal the denial of a petition for a writ of habeas corpus, Petitioner must obtain a certificate of  
17 appealability, after making a “substantial showing of the denial of a constitutional right.” 28 U.S.C.  
18 §2253(c).

19 Where a district court has rejected the constitutional claims on the  
20 merits, the showing required to satisfy §2253(c) is straightforward:  
21 The petitioner must demonstrate that reasonable jurists would find the  
22 district court’s assessment of the constitutional claims debatable or  
23 wrong. The issue becomes somewhat more complicated where, as  
24 here, the district court dismisses the petition based on procedural  
25 grounds. We hold as follows: When the district court denies a habeas  
petition on procedural grounds without reaching the prisoner’s  
underlying constitutional claim, a COA should issue when the  
prisoner shows, at least, that jurists of reason would find it debatable  
whether the petition states a valid claim of the denial of a  
constitutional right and that jurists of reason would find it debatable  
whether the district court was correct in its procedural ruling.

26 Slack v. McDaniel, 529 U.S. 473, 484 (2000); see also James v. Giles, 221 F.3d 1074, 1077-79 (9th  
27 Cir. 2000). Petitioner presents three issues on appeal, and the Court finds that all three meet this  
28 standard.

1 IT IS THEREFORE ORDERED that the Application for Certificate of Appealability  
2 (#46) is **GRANTED** on the following issues:

3 1. Whether the Petition (#1) states valid claims of the denial of a constitutional  
4 right;  
5 2. Whether the Court was correct in its procedural ruling;  
6 3. Whether Petitioner provided sufficient cause to equitably toll the time he  
spent on his untimely state petition.

7 DATED: March 7, 2008.

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10 ROGER L. HUNT  
Chief United States District Judge

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